

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

DANNY KEELER,)	
)	
Plaintiff,)	Case No. 04-286-KI
)	
vs.)	OPINION AND ORDER
)	
PORT OF PORT ORFORD, an Oregon)	
municipal corporation, PERATROVICH,)	
NOTTINGHAM & DRAGE, INC., a)	
foreign corporation; LASKEY-CLIFTON,)	
INC., an Oregon corporation; AURORA)	
CRANE CORPORATION, a foreign)	
corporation; and ALLIED POWER)	
PRODUCTS, INC., an Oregon corporation,)	
)	
Defendants.)	

KING, Judge:

Before the court is Port of Port Orford's ("Port") FRCP 54(d) Petition for Award of Attorney Fees (#72). Keeler's claims against the Port were dismissed in summary judgment.

The Port seeks \$30,015 in attorney fees based on the attorney fees clause in the Moorage Lease Application and Agreement (“Agreement”) executed by the Port and Keeler. Keeler did not respond to the motion.

I deny the Port’s motion for two reasons. The attorney fees clause in the Agreement states:

2. In the event it shall become necessary for the Port of Port Orford, by civil action, to enforce the collection of any sum of monies due from the permittee [Keeler], permittee shall pay all collection costs including, but not limited to, court costs and reasonable attorney’s fees, which the Port of Port Orford may incur as a result thereof.

Anderson Aff. Ex. D (filed in support of motion for summary judgment.

The action between Keeler and the Port is not a collection action brought by the Port. Keeler is trying to collect the losses he suffered when his commercial fishing boat was damaged while at the Port. Thus, the attorney fees clause does not apply and cannot be the basis for the Port’s petition.

Even if the attorney fees clause applied, I would not grant the motion because the Port did not allocate the fees incurred defending against Keeler’s claim from the fees incurred in the third party claims.

Port of Port Orford’s (“Port”) FRCP 54(d) Petition for Award of Attorney Fees (#72) is denied.

IT IS SO ORDERED.

Dated this 13th day of July, 2005.

/s/ Garr M. King
Garr M. King
United States District Judge